

CORONADO DEVELOPMENT CORPORATION

IBLA 75-158

Decided February 26, 1975

Appeal from the decision of the District Manager, Safford District Office, Arizona, BLM, cancelling grazing lease S-02047044 for violation of the regulations by subleasing lands within the area of the lease.

Affirmed.

1. Grazing Lease: Cancellation

A grazing lease issued pursuant to section 15 of the Taylor Grazing Act is properly cancelled where the lessee has violated the terms of the lease and the regulations by subleasing lands within the area of the lease.

APPEARANCES: Gerard Anderson, Esq., of Tucson, Arizona, for appellant.

OPINION BY ADMINISTRATIVE JUDGE RITVO

Coronado Development Corporation has appealed from a decision of the Safford District Manager, Bureau of Land Management, dated August 13, 1974, cancelling its grazing lease issued pursuant to Section 15 of the Taylor Grazing Act, as amended, 43 U.S.C. s 315m (1970). The grazing lease was cancelled in whole for the stated reason that the lessee was in violation of 43 CFR 4125.1-1(g) which provides that no part of the leased land may be subleased by the lessee and that grazing on the lease area of livestock not owned or controlled by the lessee with or without the lessee's consent is prohibited.

Coronado Development Corporation was awarded a seven-year section 15 lease, authorizing 75 AUMs cattle use, effective January 6, 1971, for 666.79 acres of national resource lands located in T. 22 and T. 23 S., R. 28 E., G&SRM, Arizona. The lease issued pursuant to a request for assignment, dated October 13, 1970, from the former lessee, Walter E. Swaggart.

Prior to the cancellation of the lease the Bureau had questioned whether Coronado was actively engaged in a livestock business and whether it had a need for this grazing use. After several inquiries as to the nature of appellant's operation, field inspections of the leased land were conducted by Bureau of Land Management personnel on July 20, 22 and 24, 1974. From these inspections it was determined that cattle bearing a "Z" brand on the right shoulder, owned by Hector R. and J. A. Morales, were grazing in trespass on lands within the Coronado lease area. <sup>1/</sup> Notices of trespass were issued to the Morales July 26, 1974, and August 9, 1974.

The Bureau issued a show cause notice to Coronado, July 26, 1974, pointing out the alleged violation of the regulations by the grazing of the lease area by livestock not owned nor controlled by the lessee. Coronado responded with a general denial that it was in violation of the terms of the lease agreement. The Bureau's notice of cancellation followed August 13, 1974.

On appeal Coronado again states it is unaware of any violation as alleged. It states that the lease property is widely dispersed and unfenced. Therefore, there is a possibility that one inspecting the lease property would be uncertain where the lease property is located.

Because of the uncertainty, Coronado requests an opportunity to confront the individual who examined the lease property to determine whether the property he inspected was being grazed as alleged.

Sec. 3(e) of appellant's lease provides:

The authorized officer may terminate and cancel this lease upon the lessee's default in the performance or observance of any terms, covenants, and stipulations thereof, or of the regulations of the Department of the Interior now or hereafter in force \*

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Sec. 3(f) of the lease also provides:

Assignment of this lease will not be recognized by the United States without proper application and written consent of the authorized officer.

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<sup>1/</sup> A brand lease filed with the Arizona State Livestock Sanitary Board indicated the "Z" brand was leased to Hector Gene and J. A. Morales by Ben F. Williams, Jr., from 5-25-74 to 1-1-75.

The governing regulation, 43 CFR 4125.1-1(g) provides:

Subleases. No part of the lease land may be subleased by the lessee. The grazing on the lease area of livestock not owned or controlled by the lessee with or without the lessee's consent is prohibited.

Our review of the record confirms the Bureau's determination that appellant has violated the cited regulation and provisions of the lease.

Coronado's contentions on appeal clearly conflict with other admissions of record. 2/

[1] It has long been established where lands embraced in a grazing lease have been subleased to another party by the lessee of record, the lease is subject to cancellation. J. D. Kouba, 60 I.D. 205 (1948). In view of the flagrant violations herein concerned the District Manager acted appropriately to cancel appellant's grazing lease.

Appellant in effect requests a hearing in order to clarify the circumstances of the Bureau's field inspections. However, it has not denied that it improperly subleased the lease land. There are no statutory or regulatory procedures providing for a full evidentiary hearing before an Administrative Law Judge as a matter of right for section 15 grazing lessees. The regulation governing cancellation of grazing leases provides only for a submission to the authorized officer. 43 CFR 4125.1-1(h). 3/ However, under

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2/ The record contains (1) a memorandum of August 3, 1974, recounting phone conversations between appellant's counsel, Mr. Gerard Anderson, and Bureau personnel, Mr. Joseph Patti, Jr., and Mr. Art Gerity, which indicates that representatives of the corporation have been well aware of their actions and have been advised of the necessary consequences flowing from their sublease arrangement, and (2) a letter to the District Manager, dated April 25, 1974, from Mr. Frank Aries, a Coronado representative, which admits they have also allowed a prospective purchaser to graze his cattle on their ranch during the current grazing season.

3/ This regulation provides:

(h) Cancellation or reduction of leases; show cause. Leases are subject to cancellation or reduction for the lessee's failure to comply with the terms of the lease or the provisions of this part of the regulations, or in any case that a lease confers use in excess of that properly allowable. In any such case the Authorized Officer

the general procedural regulations any party to an appeal may request, and the Board may, in its discretion, order a hearing to take evidence on an issue of fact. 43 CFR 4.415. Such a hearing is ordered only if there is a sufficient basis for doing so. Ruth E. Han, 13 IBLA 296 (1973), 80 I.D. 698 (1973). The questions appellant has raised have no bearing on the issue of whether appellant subleased the lease land. The lease is subject to cancellation for this reason alone. Accordingly, appellant has not demonstrated a basis for a hearing and the request is denied.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Martin Ritvo  
Administrative Judge

We concur:

Joan B. Thompson  
Administrative Judge

Douglas E. Henriques  
Administrative Judge

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(Fn. 3 Cont.)

will notify the lessee that the lease is being held for cancellation or reduction in whole or in part, and will allow the lessee fifteen (15) days from receipt of the notice within which to show cause why such action should not be taken. The notice will fully set forth the reasons for the proposed action, specifically referring to the pertinent provisions of the regulations, and will be served on the lessee personally or by certified mail. The Authorized Officer will consider any case shown and, if not satisfied as to its sufficiency, or if no cause is shown, he will notify the lessee personally or by certified mail that the lease has been cancelled or reduced as the case may be. Such decision is subject to appeal.

